

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 360 of 1997

with

CIVIL APPLICATION NO. 6770 OF 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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THAKORELAL NARBHERAM SHAH

Versus

RAMESHCHANDRA ALIAS ASHOK THAKORELAL SHAH

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Appearance:

MR AS VAKIL for Petitioner

MR UTPAL M PANCHAL for Respondent No. 1, 2, 3, 4, 5, 6

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CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 10/10/97

ORAL JUDGEMENT

1. The appeal has been admitted under the previous orders. The same is being taken up for final hearing under the consent of the learned counsel for the parties.

2. The appeal is directed against the orders below Application Ex.5 in Indigency application No.100 of 1996 dated 3rd April, 1997, pronounced by the learned Civil Judge (S.D.), Surat (2nd Joint Court). In the application at Ex.5, the prayer of the present appellant, who happens to be the original plaintiff, was in alternative. As a principal prayer, he had asked for the actual physical possession of the premises in question. Alternatively, he has claimed the mesne profits at the rate of Rs.2000/- per month. As pointed out by the Court below, it is an unfortunate incident of a dispute between the parents on the one hand and the son and the members of his family on the other hand. The appellant-plaintiff was 77 years of age when the application came to be filed in year 1966. Admittedly, respondent No.1 works as the Officer with the State Bank of India, at Surat. The Court below has, taking into consideration the relationship between the parties, not granted the principal prayer, but has ordered and directed that defendant No.1 shall pay an amount of Rs.1200/- per month by way of mesne profits to the appellant till the disposal of the suit. The appellant is aggrieved by the abovesaid orders and, hence, this appeal.

3. Learned counsel, Mr. A.S. Vakil, who appears on behalf of the appellant has the two fold grievance to be made before me. The first grievance coming from the learned counsel is that the Court below should have given the mandatory direction regarding the possession of the premises in question. The second and the alternative grievance coming from the learned counsel is that, looking to the extent of the premises in question and looking to the earning of respondent No.1, the amount of mesne profits fixed by the Court below requires an upward modification. Of course, the reaction on the part of the learned counsel, Mr. Panchal, is that the Court below has not erred on any of the two counts.

4. After having heard the learned counsel for the parties, I am of the opinion that, regard being had to the relationship between the parties, the Court below was justified in not granting the principal prayer regarding the handing over of the possession. I am, therefore, in agreement with what has been stated by the learned Trial Judge in this respect.

5. So far as the alternative grievance coming from the learned counsel, Mr. Vakil, is concerned, I am of the opinion that there has been a substantial force in

the same. It is not disputed that the premises being occupied by respondent-defendant No.1 comprise of three rooms on the ground floor and one room and the open terrace on the second floor. The premises are situated at Nanavat locality within the city of Surat. Respondent No.1 works as the Officer at State Bank of India, Surat Branch. The pay slip is being shown to me by learned counsel, Mr. Panchal. A reference to this would go to show that the total earnings of respondent No.1 would be in sum of Rs.12,348.77 np. per month. Against these total earnings, the total deductions are in sum of Rs.5900/-. But it shall have to be appreciated that these deductions include the deductions for the Provident Fund, the Income Tax and the deductions against the loan which the respondent-defendant No.1 had taken from the co-operative credit society of the bank. Therefore, the abovesaid deductions cannot be accepted at the face value. Moreover, it is an admitted position that respondent No.1 has got certain other residential premises in the city and that he gets an amount of Rs.1350/- per month as the rent. Looking to this income of respondent No.1 and not taking into consideration some income of respondent No.3-Divyang, who happens to be the son of respondent No.1, it appears that there is a scope for some upward modification in the abovesaid amount. In my opinion, the purpose would be served if the amount of Rs.1200/- per month fixed by the Court below is increased to an amount of Rs.1500/- per month. The abovesaid increase shall be effective with effect from 1st June, 1997. The arrears shall be paid as early as possible and within a period of one month hereof.

5. There was a grievance coming from learned counsel, Mr. Vakil, that the maintenance amount fixed by the Competent Criminal Court is also not being paid by respondent-defendant No.1. Learned counsel, Mr. Panchal, makes a statement that all the arrears, if any, shall be paid on or before 24th October, 1997. The statement is not only recorded but also respondent-defendant No.1 is directed to act accordingly under the present orders.

6. The appeal, therefore, succeeds to the aforesaid extent and is partly allowed. The orders of the Court below shall stand modified accordingly. The Court below is directed to hear and decide the proceedings as early as possible, under any rate, before 30th April, 1998.

7, No further orders are required on the C.A. in view of my orders on the A.O. C.A. stands disposed of. Rule is discharged with no order as to costs.

